

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO: 2017CP2301177

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO. SC

2017 MAY -4 AM 11: 57

Marion James Dodd vs. South Carolina State of

CHECK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON):** Rule 40(j) SCRPC; Bankruptcy: Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other: _____

IT IS ORDERED AND ADJUDGED:

See attached order;

Statement of Judgment by the Court:

RECEIVED

Dated at Greenville, South Carolina, this .

JUN 21 2017

SC Court of Appeals

Court Reporter:

PRESIDING JUDGE -

Marion James Dodd 236658 Tyger River
Correctional Institution 200 Prison Road Enoree, SC
29335

Kevin Desmond Maroney PO Box 11549
Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

i. Background

Mr. Dodd's action stems from a civil forfeiture that ended on October 7, 2010 (Case number 2010-CP-23-06308). The court in that action entered a default judgment against the Plaintiff, which resulted in the forfeiture of \$1,545.00 pursuant to Section 44-53-530.² Mr. Dodd's money was subject to forfeiture because the police seized it while executing a search warrant in Greenville County; police also discovered illegal drugs and drug paraphernalia, as well as a firearm.³

Almost six years later, on August 22, 2016, the Plaintiff filed an action in Richland County.⁴ Mr. Dodd claims no one served him with pleadings in the 2010 civil forfeiture action, and, therefore, judgment in the civil forfeiture action must be overturned. Mr. Dodd based his cause of action on a claim of extrinsic fraud.

ii. Extrinsic Fraud

Extrinsic fraud is "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard."⁵ Extrinsic fraud must be proved by clear and convincing evidence.⁶ Additionally, the doctrine of laches applies to cases of extrinsic fraud: "[T]he doctrine of laches would be applicable in determining whether an action is time-barred[,] even if extrinsic

² See the Plaintiff's Complaint, Exhibit D ("Order of Entry of Default and Forfeiture" in Case No. 2010-CP-23-06308).

³ See the Plaintiff's Complaint, Exhibit C (Greenville County Sheriff's Office Supplemental Report).

⁴ The action was originally styled as a Rule 60(b) motion, but the presiding judge in Richland County construed the document as a complaint. The presiding judge transferred the case to Greenville County, and dismissed every defendant other than the State.

⁵ *Hagy v. Pruitt*, 339 S.C. 425, 431, 339 S.E.2d 714, 717-18 (2000) (citing *Hilton Head Center of South Carolina, Inc. v. Public Service Comm'n*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)).

⁶ *Hagy v. Pruitt*, 339 S.C. 425, 432 at n. 8, 529 S.E.2d 714, 718 at n. 8 (2000) (citing among other cases *First State Savings & Loan v. Phelps*, 299 S.C. 441, 385 S.E.2d 821 (1989)).

fraud is established.”⁷ Laches is an equitable doctrine “defined as neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done.”⁸ A party who wants to establish laches must show (1) a delay (2) that was unreasonable, as well as (3) prejudice.⁹

iii. Laches

As stated above, a party who wants to establish laches must show a delay that was unreasonable, as well as prejudice. All three elements are present in this case. Mr. Dodd waited almost six years before inquiring about the \$1,545. That delay was unreasonable because Mr. Dodd admits that he “strongly refused to forfeit [his] money upon [his] arrest.”¹⁰ The night of his arrest was in 2010. Mr. Dodd included a letter from the Greenville County Sheriff’s Office and a letter from the Greenville County Solicitor’s Office in his complaint. (Letters marked A¹ and A³, respectively). Those letters to Mr. Dodd indicate that the respective agencies are responding to a letter that Mr. Dodd sent each of them on May 24, 2016. Mr. Dodd could have inquired about his money much sooner than that day. Given that he was on notice about the State’s intentions toward his money in 2010, a delay of almost six years before inquiring about his money or filing an action is unreasonable.

In a reply to the State’s motion for summary judgment, Mr. Dodd contended that he inquired about his money earlier than 2016. He supposedly sent letters in 2011, 2013, and 2015. Mr. Dodd argued that, because he did not receive replies to those letters, his delay in filing an

⁷ *Robinson v. Estate of Harris*, 388 S.C. 616, 626-7, 698 S.E.2d 214, 220 (2010) (citing *Hagy v. Pruitt*, 339 S.C. 425, 431 n. 7, 339 S.E.2d 714, 717 n. 7 (2000)).

⁸ *Robinson v. Estate of Harris*, 388 S.C. 616, 627, 698 S.E.2d 214, 220 (2010) (citing *Hallums v. Hallums*, 296 S.C. 195, 198, 371 S.E.2d 525, 527 (1988) (internal quotations omitted)).

⁹ *Id.* (citing *Hallums*, 296 S.C. at 199, 371 S.E.2d at 528).

¹⁰ See Plaintiff’s Complaint, p. 3 (referencing Plaintiff’s Exhibit C, Greenville County Sheriff’s Office Supplemental Report).

action was reasonable. Mr. Dodd, however, did not include those letters in his reply. The court did not have them either. Mr. Dodd, moreover, neither explained the whereabouts of the letters, nor provided them for the court.

Nevertheless, even if Mr. Dodd did inquire about his money earlier than 2016, his delay in filing an action was indeed unreasonable because he was on notice about the State's intentions toward his money during the night of his arrest. In spite of that notice, as well as the lack of responses to his 2011, 2013, and 2015 letters, Mr. Dodd still did not file an action until almost six years later. Given the circumstances, a delay of almost six years before filing an action is unreasonable.

Finally, the unreasonable delay prejudices the State by forcing it to defend a forfeiture that has already occurred. The lower court forfeited the money to Greenville County Sheriff's Office, which has likely spent it at this point. More importantly, although the Affidavit of Service (August 23, 2010) clearly follows APS Legal Ease procedures and shows how service was accomplished in 2010, Ms. Williams does not have "a personal recollection"¹¹ (nearly seven years later) of the event of service. If Mr. Dodd had exercised due diligence, the length of time would have been shorter and any question he had about service could have been addressed then rather than at this late date.

A further prejudice would occur if this court were to find extrinsic fraud and overturn the judgment in the forfeiture action. The State would have to serve Mr. Dodd a summons and complaint, and he would then have the opportunity to establish to the satisfaction of a court that the \$1,545—found along with narcotics, narcotics paraphernalia, and a firearm—are not

¹¹ The State's Motion for Summary Judgment, EXHIBIT THREE (Affidavit of Kathy F. Williams, Feb. 20, 2017), ¶7.

“products of illegal acts.”¹² After more than six years, it is unclear what Mr. Dodd could offer in satisfaction of that burden, but, at this point, it is also unclear what the State could offer in rebuttal, other than restating that officers found the money along with narcotics, drug paraphernalia, and a firearm.¹³

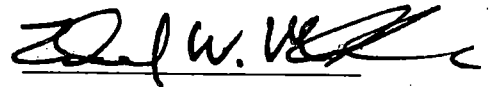
Because the State has shown unreasonable delay and prejudice, the equitable doctrine of laches applies to this case. That doctrine exists to prevent the exact type of situation that the State faces in this action.

II. Conclusion

Because the State has shown that the equitable doctrine of laches applies to this case, there is no genuine issue of material fact and the State is entitled to judgment as a matter of law.

THEREFORE, THE COURT ORDERS THE FOLLOWING:

The State’s motion for summary judgment is **GRANTED**.



Edward W. Miller
Presiding Judge
Thirteenth Judicial Circuit

4/27, 2017

¹² S.C. Code Ann. §44-53-520(a)(8).

¹³ The State reserved all claims and defenses should a new forfeiture be brought.